

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Donna Miller,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 2:11-cv-438
	:	
	:	JUDGE JAMES L. GRAHAM
New Salem Baptist Church,	:	Magistrate Judge Kemp
et al.,	:	
	:	
Defendants.	:	

REPORT AND RECOMMENDATION
AND ORDER

Plaintiff, Donna Miller, who appears to be a resident of Franklin County, Ohio, has filed a motion for leave to proceed *in forma pauperis* and a civil complaint against the New Salem Baptist Church, the Reverend Keith Troy, and Brenda Troy, all of whom also appear to be residents of Franklin County, Ohio. It does not appear that Ms. Miller can afford the filing fee for a civil action, so her motion for leave to proceed *in forma pauperis* (#1) is granted. For the following reasons, it will be recommended that the case be dismissed for lack of subject-matter jurisdiction.

I.

28 U.S.C. §1915(e)(2) provides that in proceedings *in forma pauperis*, "[t]he court shall dismiss the case if ... (B) the action ... is frivolous or malicious [or] fails to state a claim on which relief can be granted...." The purpose of this section is to prevent suits which are a waste of judicial resources and which a paying litigant would not initiate because of the costs involved. See Neitzke v. Williams, 490 U.S. 319 (1989). A complaint may be dismissed as frivolous only when the plaintiff fails to present a claim with an arguable or rational basis in

law or fact. See id. at 325. Claims which lack such a basis include those for which the defendants are clearly entitled to immunity and claims of infringement of a legal interest which does not exist, see id. at 327-28, and "claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar." Id. at 328; see also Denton v. Hernandez, 504 U.S. 25 (1992). A complaint may not be dismissed for failure to state a claim upon which relief can be granted if the complaint contains "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U. S. 544, 570 (2007). *Pro se* complaints are to be construed liberally in favor of the *pro se* party. Haines v. Kerner, 404 U.S. 519 (1972). The complaint will be evaluated under these standards.

One of the requirements for a complaint filed in a federal (as opposed to a state) court is that the complaint set forth "a short and plain statement of the grounds for the court's jurisdiction...." Fed.R.Civ.P. 8(a)(1). The jurisdiction of the federal courts, as a whole, is limited by the grant of jurisdiction found in Article III, Section 2 of the United States Constitution, and the jurisdiction of United States District Courts is further limited to those cases which, by Act of Congress, the Court is authorized to hear. The two primary bases for jurisdiction over cases filed in the District Courts (although there are others, none of which apply here) are 28 U.S.C. §1331 and 28 U.S.C. §1332. The former applies to cases in which a question "arising under the Constitution, laws, or treaties of the United States" is present. The latter provides for jurisdiction in suits involving parties from different states where the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

Ms. Miller's complaint does not contain the required

statement of jurisdiction. Further, a reading of the complaint shows that whatever claims Ms. Miller may have - and the nature of her claims is not entirely clear, but they seem to relate to some type of landlord-tenant relationship between her and the New Salem Baptist Church - they neither arise under federal law nor involve parties from different states. Even liberally construed, the allegations of the complaint appear to relate either to a claim by the defendants that Ms. Miller has somehow damaged their property or has allowed illegal activity to occur on that property, or that the defendants have threatened her with physical assault. These are, at best, some type of state law claims, and do not arise under the United States Constitution or any federal statute or treaty. Further, all of the parties to this case appear to be Ohio residents, so the case does not involve claims between parties from different states. The Court therefore concludes that it lacks jurisdiction over the complaint, and the complaint should be dismissed without prejudice for that reason.

II.

Based on the foregoing, plaintiff's motion for leave to proceed *in forma pauperis* (#1) is granted. Further, it is recommended that this action be dismissed under 28 U.S.C. §1915(e) for lack of subject-matter jurisdiction.

III.

If any party objects to this Report and Recommendation, that party may, within fourteen days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A judge of this Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. Upon proper

objections, a judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the magistrate judge with instructions. 28 U.S.C. §636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the district judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140 (1985); United States v. Walters, 638 F.2d 947 (6th Cir.1981).

/s/ Terence P. Kemp
United States Magistrate Judge